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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/492,137	01/27/2000	Takayuki Watanabe		9482

7590

03/31/2003

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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 03/31/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/492,137

Applicant(s)

WATANABE ET AL

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other

## DETAILED ACTION

### *Continued Prosecution Application*

1. The request filed on November 27, 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/492,137 is acceptable and a CPA has been established. Claims 1-13, 15 are pending in the application. Claims 11 and 13 are drawn to non-elected inventions in Paper No. 4. An action on the CPA follows.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1,7,9,10,12,15 are rejected under 35 U.S.C. 102(e) as being anticipated by Morimoto et al. (JP 10056969 A).

4. Morimoto teaches a soybean protein/cocoa granule for a drink, as recited in claim 12, wherein the cocoa, which is taken to be a coloring agent as well as has supplying various oil soluble vitamins such as vitamin E (i.e. via cocoa butter) as recited in claims 1 and 15, 1-6% hemicellulose as recited in claims 1 and 7, and 0.2-2% trehalose as recited in claim 1. The ratio of trehalose to hemicellulose is between 50:1

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to 1:50 (e.g. .0.2% to 1% or 2% to 1%) including 8:1 to 1:1, as recited in claims 9 and 10 (See English Abstract and English Specification, paragraphs 0008-0018).

5. Claims 1-4,12,15 are rejected under 35 U.S.C. 102(e) as being anticipated by Narimatsu et al (US 6224931 B1).

6. Narimatsu et al. teach adding a powder of hemicellulose to noodles as recited in claim 12, and the powder may further comprise vitamin E (tocopherol) as recited in claims 1 and 15, and trehalose, as recited in claim 1 (Column 3, lines 12-39). The hemicellulose is derived from soybeans by heat extraction, as recited in claims 2 and 3, with a molecular weight of 50,000 -1,000,000 as recited in claim 4( Column 2, lines 28-57).

7. Claims 1-4,12,15 are rejected under 35 U.S.C. 102(e) as being anticipated by Nakamura et al. (US 6045847)

8. Nakamura et al. teach adding a powder of hemicellulose to noodles as recited in claim 12, and the powder may further comprise vitamin E (tocopherol) as recited in claims 1 and 15, and trehalose, as recited in claim 1 (Column 4, lines 10-36). The hemicellulose is derived from soybean by heat extraction, as recited in claims 2 and 3, has a molecular weight of 50,000 to 1,000,000 as recited in claim 4 (Column3, lines 25-Column 4, line 3).

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9. Claims 1 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Vermeer (US 5880076).

10. Vermeer teaches a powder consisting of perfumes, coloring agents, or even vitamin E or lecithin as recited in claim 15(Column 49, lines 50+) in combination with trehalose and water-soluble hemicellulose as recited in claim 1(column 14, lines 15+, column 21, lines 25+).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-8, rejected under 35 U.S.C. 103(a) as being unpatentable over Shiseido (JP06040845 A) in view of Hattori (JP 06157238A).

13. Regarding claims 1-8, Shiseido teaches a solid powder containing trehalose up to 50% as recited in claims 1, 5 and 6, with perfume and a water soluble polymer (i.e. the material may contain one or more mixt. ). The intended purpose is a non-sticky cosmetic that maintains moisture, but is still stable (English Abstract and English Specification Paragraphs 0001-0006). However, Shiseido is silent in teaching adding hemicellulose with a MW of 50,000 to 1,000,000 derived from soybean by acidic heat extraction as recited in claims 1-4 at 10-40% in the powder as recited in claims 7 and 8.

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14. Hattori et al who also teaches a cosmetic that retains moisture without deteriorating using a water soluble polymer, are relied on as evidence of using a water soluble hemicellulose with a MW of 50,000 to 1,000,000 derived from soybean by acidic heat extraction as recited in claims 1-4 ( English Abstract and English Specification Paragraph 0011). Furthermore Hattori et al. teach the hemicellulose is effective at 0.001-20%, as recited in claims 7 and 8 (English Specification Paragraph 0020).

15. Therefore, it would have been obvious to include hemicellulose with a MW of 50,000 to 1,000,000 derived from soybean by acidic heat extraction in the solid powder of Shiseido since one would have been substituting one known water soluble polymer for another for the same purpose: a cosmetic that retains moisture without deteriorating. It would have been further obvious to include between 10% and 40% hemicellulose since Hattori et al. teach this is an effective level to achieve the same result as Shiseido: moisture stability in a cosmetic.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen  
Examiner  
Art Unit 1761  
March 17, 2003

*Steve Weinstein*  
**STEVE WEINSTEIN**  
**PRIMARY EXAMINER** 1761  
3/24/03  
for  
M. Cano